

APPENDIX A

**CORPORATE INTEGRITY AGREEMENT BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
*UNION HOSPITAL***

I. PREAMBLE

Union Hospital, Inc., d/b/a Union Hospital Group (“*Union Hospital*”) hereby agrees to enter into this Corporate Integrity Agreement (“CIA”) with the Office of Inspector General (“OIG”) of the United States Department of Health and Human Services (“HHS”) and implement any reasonable and necessary policies, procedures, and practices to ensure compliance by its acute care hospital in Terre Haute, Indiana and its subsidiaries, agents, departments, employees, and affiliates with the terms of this CIA and the requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Union Hospital’s compliance with the terms and conditions in this CIA shall constitute an element of Union Hospital’s present responsibility with regard to participation in Federal health care programs.

Contemporaneously with this CIA, Union Hospital is entering into a Settlement Agreement with the United States, and this CIA is incorporated by reference into the Settlement Agreement.

Prior to the execution of this CIA, Union Hospital Health Group voluntarily established a Corporate Compliance Program that created various corporate policies and procedures which, as represented by Union Hospital, are aimed at ensuring that its participation in the Federal health care programs is in conformity with the statutes, regulations and guidelines applicable to the programs.

II. TERM OF THE CIA

The period of the compliance obligations assumed by Union Hospital under this CIA shall be five (5) years and thirty (30) days from the effective date of this CIA (unless otherwise specified). The effective date of this CIA will be the date of the final signature on this CIA (hereafter the "Effective Date").

III. CORPORATE INTEGRITY OBLIGATIONS

A. Corporate Compliance Officer. Within ninety (90) days after the Effective Date, Union Hospital shall hire and/or appoint a Compliance Officer who shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with the requirements of Medicare, Medicaid, and all other Federal health care programs. The Compliance Officer shall be a member of senior management of Union Hospital, shall make regular (at least quarterly) reports regarding compliance matters directly to the Union Hospital CEO and/or to the Board of Directors of Union Hospital and shall be authorized to report to the Board of Directors at any time. In the event a new Compliance

Officer is appointed during the term of this CIA, Union Hospital shall notify the OIG, in writing, within fifteen (15) days of such a change.

Union Hospital shall also appoint a Corporate Compliance Committee (“Compliance Committee”), referred to within Union Hospital’s Corporate Compliance Program as the “Compliance Management Committee,” within ninety (90) days after the Effective Date. The Compliance Committee shall, at a minimum, include the Compliance Officer and any other appropriate officers as necessary to meet the requirements of this CIA within the Union Hospital’s corporate structure (e.g., senior executives of each major department, all divisions and services). The Compliance Committee shall support the Compliance Officer in fulfilling his/her responsibilities.

B. Written Standards.

1. *Code of Conduct.* If it has not already done so, within ninety (90) days of the Effective Date, Union Hospital shall establish a Code of Conduct. The Code of Conduct shall be distributed to all employees, contracted personnel, active staff physicians, students, and other agents within one hundred twenty (120) days of the Effective Date. Union Hospital shall make the promotion of and adherence to the Code of Conduct an element in evaluating the performance of managers, supervisors, and all other employees. The Code of Conduct shall, at a minimum, set forth:

- a. Union Hospital’s commitment to full compliance with all statutes, regulations, and guidelines applicable to Federal health care

programs, including its commitment to prepare and submit accurate billings consistent with Federal health care program regulations and procedures or instructions otherwise communicated by the Health Care Financing Administration (“HCFA”) (or other appropriate regulatory agencies) or its agents;

b. the responsibility of all of Union Hospital’s employees, staff physicians, and independent contractors to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Union Hospital’s own policies and procedures (including the requirements of this CIA);

c. the responsibility of all of Union Hospital’s employees, staff physicians, and independent contractors to report suspected violations of any statute, regulation, or guideline applicable to Federal health care programs or with Union Hospital’s own policies and procedures;

d. the possible consequences to both Union Hospital and to any employee, staff physicians, and independent contractors of failure to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Union Hospital’s own

policies and procedures or of failure to report such non-compliance;

and

e. the right of all employees, staff physicians, and independent contractors to use the confidential disclosure program and Union Hospital's commitment to confidentiality and non-retaliation with respect to disclosures.

Within one hundred twenty (120) days of the Effective Date, each employee, staff physician, and independent contractor shall certify, in writing, that he or she has received, read, understands, and will abide by Union Hospital's Code of Conduct. New employees, staff physicians, and independent contractors shall receive the Code of Conduct and shall complete a required certification within two (2) weeks after the (i) commencement of their employment, (ii) execution of their contract or (iii) grant of staff privileges or within ninety (90) days of the Effective Date, whichever is later.

Union Hospital will annually review the Code of Conduct and will make any necessary revisions. These revisions shall be distributed within thirty (30) days of initiating such change.

2. *Policies and Procedures.* Within ninety (90) days of the Effective Date, Union Hospital shall develop and initiate implementation of written Policies and Procedures regarding the operation of Union Hospital's corporate integrity program and its compliance with all federal and state health care statutes, regulations, and guidelines,

including the requirements of the Medicare, Medicaid, and other Federal health care programs. In addition to other requirements, the Policies and Procedures shall specifically address the proper submission of reimbursement claims for services furnished through any residency training program at Union Hospital. In addition, the Policies and Procedures shall include disciplinary guidelines and methods for employees to make complaints and notifications about compliance issues to Union Hospital management through the Confidential Disclosure Program required by section III.G Union Hospital will update the Policies and Procedures at least annually and more frequently as appropriate. An index of the Policies and Procedures will be provided to the OIG in the Implementation Report. The Policies and Procedures will be available to the OIG upon request.

Within one hundred twenty (120) days of the Effective Date, the relevant portions of the Policies and Procedures shall be distributed to all new and existing employees and medical staff members through Union Hospital's compliance handbook publication. Compliance staff or supervisors must be available to explain any and all policies and procedures. In addition, full and complete copies of the Policies and Procedures must be made readily available to all employees and medical staff for their review and the location of such copies shall be communicated to all employees and medical staff at the time of distribution of the compliance handbook publication.

C. Training and Education.

1. *General Training.* Within ninety (90) days after the Effective Date, Union Hospital shall provide at least two (2) hours of training to each employee. This general training shall explain Union Hospital's:

- a. Corporate Integrity Agreement requirements;
- b. Compliance Plan; and
- c. Code of Conduct.

These training material shall be made available to the OIG, upon request.

New employees shall receive the general training described above within thirty (30) days of the beginning of their employment or within ninety (90) days after the Effective Date, whichever is later. Union Hospital must also make available general training (either as part of or distinct from the aforementioned training) for all independent contractors and all staff physicians and shall actively encourage their participation in such training.

2. *Substantive Training.* Within one hundred twenty (120) days of the Effective Date, each employee who is involved in the preparation or maintenance of medical records and/or in the preparation or submission of claims for reimbursement for medical care (including, but not limited to, coding and billing) for Medicare, Medicaid, or any other Federal health care programs shall receive at least four (4) hours of training in

addition to the general training required above. This training shall include a discussion of:

- a. the submission of accurate bills for services rendered to Medicare and/or Medicaid patients;
- b. the personal obligation of each individual involved in the billing process to ensure that such billings are accurate;
- c. applicable reimbursement rules and statutes;
- d. the legal sanctions for improper billings; and
- e. examples of proper and improper billing practices.

3. *Residency Program Training.* In addition to the training mentioned immediately above, Union Hospital shall provide at least six (6) hours of separate training for the clinical employees, independent contractors (including all teaching physicians at Union Hospital), and employed billing staff who are associated with Union Hospital's physician residency program. This additional training shall cover the statutes, regulations and program guidance for Federal health care program billing and documentation requirements concerning physician residency programs.

4. *Training Materials and Qualifications.* All training materials used to fulfill the obligations of this section shall be made available to the OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

5. *Training of New Employees and Contractors.* Affected new employees and independent contractors shall receive the substantive and residency program training within thirty (30) days of the beginning of their employment or the initiation of their duties under an independent contractor arrangement or within one hundred twenty (120) days of the Effective Date, whichever is later. If a new employee has any responsibility for the preparation or submission of claims and/or the assignment of procedure codes prior to completing this substantive training, a Union Hospital employee who has completed the substantive training shall review all of the untrained person's work regarding the preparation or submission of claims and/or the assignment of procedure codes.

6. *Annual Training.* On an annual basis, every relevant employee, independent contractor, and medical staff member shall receive general, substantive and residency training as specified above.

7. *Certification.* Each employee shall certify, in writing, that he or she has attended the required training. The certification shall specify the type of training received and the date received. Union Hospital shall also identify the measures taken to encourage the participation in such training of its independent contractors and medical staff in its annual report to the OIG. Union Hospital shall also provide in its annual report to the OIG the percentage of its independent contractors and medical staff who attended such training in the preceding training period.

D. Audits and Review.

1. *Established Audit/Review Protocols.* Union Hospital has established a corporate compliance program that requires, at a minimum, annual audits, and quarterly audits in areas that have potential billing compliance risks. For each of these internal audits, the Compliance Officer is responsible for determining whether the individuals conducting the audit have the requisite skills and expertise to perform competently the audits. If the Compliance Officer determines that the skill set is not available internally, Union Hospital will engage an independent review organization to conduct the audit. Union Hospital agrees to abide by this audit policy for the term of this CIA. The Compliance Officer shall certify in each annual report to the OIG that the aforementioned audit policy has been followed and shall specify which departments have been audited in the preceding year.

2. *Independent Review Organization Audits and Reviews*

Within one hundred and twenty (120) days from the Effective Date, Union Hospital shall retain an Independent Review Organization, such as an accounting firm or consulting firm, to perform on dates specified in Section III.D.2.a so-called “agreed upon procedures” to assist the parties in assessing the adequacy of Union Hospital’s billing and compliance practices. This Independent Review Organization review will cover the preceding twelve (12) month period. The Independent Review Organization must have

expertise in the billing, coding, reporting and other requirements of Medicare, Medicaid, and other Federal health care programs from which Union Hospital seeks reimbursement.

The Independent Review Organization will conduct two separate engagements. One will be an analysis, based upon agreed upon procedures, of Union Hospital's billing to the Medicare, Medicaid and all other Federal health care programs for services associated with Union Hospital's residency program to assist the parties in determining compliance with all applicable statutes, regulations, and policies ("billing engagement"). The second engagement will determine whether Union Hospital is in compliance with this CIA ("compliance engagement"), based upon agreed upon procedures.

a. *Residency Program Billing Engagement.* The Independent Review Organization billing engagement shall be conducted annually and completed no later than thirty (30) days following the anniversary of the Effective Date. The billing engagement shall consist of a review of a statistically valid sample of claims submitted for services in the preceding one year period furnished in connection with Union Hospital's residency program that can be projected to the population of claims affected by the matter for the relevant period. The sample size shall be determined through the use of a probe sample. At a minimum, the full sample must be designed to generate a sample with a ninety (90) percent confidence level and a precision of twenty-five (25) percent. The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full sample. Both the probe sample and the sample must be selected through

random numbers. Union Hospital may use OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at www.hhs.gov/progorg/ratstat.html.

Each individual billing engagement analysis shall include the following components in its methodology:

- i. Billing Engagement Objective: A statement clearly stating the objective intended to be achieved by the billing engagement and the procedure or combination of procedures that will be applied to achieve the objective.
- ii. Billing Engagement Population: Identify the population, which is the group about which information is needed. Explain the methodology used to develop the population and provide the basis for this determination.
- iii. Sources of Data: Provide a full description of the source of the information upon which the billing engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and contractual obligations.
- iv. Sampling Unit: Define the sampling unit, which is any of the designated elements that comprise the population of interest.

- v. Sampling Frame: Identify the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The residency program billing engagement shall provide:

- i. an analysis of Union Hospital's billing and coding operation (including, but not limited to, the operation of the billing system, strengths and weaknesses of this system, internal controls, effectiveness of the system);
- ii. an analysis of whether Union Hospital is submitting (either for any employed physicians or on behalf of staff physicians) accurate physician service claims and Part A cost reports (including direct and indirect graduate medical education costs) for services billed to Medicare, Medicaid, and other Federal health care programs related to the residency program(s);
- iii. an analysis of Union Hospital's procedures to correct inaccurate billings or codings to Medicare, Medicaid, and other Federal health care programs;
- iv. an analysis of whether Union Hospital's programs, policies, operations, and procedures comply with the applicable statutes, regulations and other requirements of Medicare, Medicaid, and other

Federal health care programs from which Union Hospital seeks reimbursement; and

v. an analysis of the steps Union Hospital is taking to bring its operations into compliance or to correct problems identified by the audit.

b. *Compliance Engagement.* An Independent Review Organization will also conduct annually for the term of this CIA a compliance engagement which will provide an analysis of whether Union Hospital's program, policies, procedures, and operations comply with the terms of this CIA. This engagement shall include a section by section analysis of the requirements of this CIA.

A complete copy of the Independent Review Organization's billing and compliance engagement shall be included in each of Union Hospital's Annual Reports to the OIG.

E. Disclosure of Overpayments and Material Deficiencies. If, as a result of Union Hospital's periodic audits or independent review organization engagements, Union Hospital identifies any billing, coding or other policies, procedures and/or practices that result in an overpayment and/or material deficiency, Union Hospital shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within thirty (30) days of discovering the deficiency or overpayment and take remedial steps within sixty (60) days of discovery (or

such additional time as may be agreed to by the payor) to correct the problem, including preventing the deficiency from recurring. The notice to the payor shall include:

1. a statement that the refund is being made pursuant to this CIA;
2. a description of the complete circumstances surrounding the overpayment;
3. the methodology by which the overpayment was determined;
4. the amount of the overpayment;
5. any claim-specific information used to determine the overpayment (e.g. beneficiary health insurance number, claim number, service date, and payment date);
6. the cost reporting period; and
7. the Union Hospital identification number under which the repayment is being made.

If Union Hospital determines an overpayment represents a material deficiency, contemporaneous with Union Hospital's notification to the payor as provided above, Union Hospital shall also notify OIG of:

1. the material deficiency (including Union Hospital's findings and any overpayment amounts);
2. Union Hospital's findings concerning the material deficiency;

3. Union Hospital's action(s) to correct and prevent such material deficiency from recurring;
4. the payor's name, address, and contact person where the overpayment was sent;
5. the date of the check and check number (or electronic transaction number) on which the overpayment was repaid.

For purposes of this CIA, an "overpayment" shall mean the amount of money Union Hospital has received in excess of the amount due and payable under the Medicare, Medicaid, or other Federal health care program's statutes, regulations or program directives.

For purposes of this CIA, a "material deficiency" shall mean anything that has a significant, adverse impact upon the Medicare and/or Medicaid programs, which may be the result of an isolated event or a series of occurrences, and which lacks conformity with Medicare and/or Medicaid billing and/or reimbursement principles or other applicable statutes, and the regulations and written directives issued by HCFA and/or its agents, or any other agency charged with administering the health care program implicated and/or its agents.

F. Verification/Validation. In the event that the OIG determines that it is necessary to conduct an independent audit or review to determine whether or the extent to which Union Hospital is complying with its obligations under this CIA, Union Hospital

agrees to pay for the reasonable cost of any such review or engagement by the OIG or any of its designated agents.

G. Confidential Disclosure Program. As part of its existing Corporate Compliance program, Union Hospital has established a Confidential Disclosure Program, which includes measures, such as a compliance “hotline.” Union Hospital agrees to maintain for the term of this CIA this confidential disclosure program which shall enable employees, contractors, agents or other individuals to disclose, to the Compliance Officer or some other person who is not in the reporting individual’s chain of command, any identified issues or questions associated with Union Hospital’s policies, practices or procedures with respect to Medicare, Medicaid, or any other Federal health care program, alleged by the individual to be inappropriate. To the extent it has not already done so, Union Hospital shall publicize the existence of the hotline (e.g., e-mail to employees or post hotline number in prominent common areas).

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. Upon receipt of a complaint, the Compliance Officer (or designee) shall gather the information in such a way as to elicit all relevant information from the individual reporting alleged misconduct. The Compliance Officer (or designee) shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a

further review should be conducted. For any disclosure that is sufficiently specific such that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice, and (2) provides an opportunity for the taking of corrective action, Union Hospital shall conduct an internal review of the allegations set forth in such disclosure and ensure that proper follow-up is conducted.

The Compliance Officer shall maintain a confidential disclosure log, which shall include a record and summary of each allegation received, the status of the investigation of the allegation, and any corrective action taken in response to the investigation.

H. Ineligible Persons. Union Hospital shall not employ, engage as contractors, or grant staff privilege to “Ineligible Persons.” For purposes of this CIA, an “Ineligible Person” shall be any individual or entity who is (i) currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal health care programs or (ii) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

Within ninety (90) days of the Effective Date, Union Hospital will review its current employees and Contractors against the General Services Administration’s List of Parties Excluded from Federal Programs (available over the Internet at <http://www.arnet.gov/epls>) and the HHS/OIG Cumulative Sanction Report (available over the Internet at <http://www.dhhs.gov/progorg/oig>) to ensure that it is not currently

employing or contracting with any Ineligible Person. Thereafter, Union Hospital will review the list once a quarter to ensure that no current employees or contractors are or have become Ineligible Persons.

To prevent hiring or contracting with any Ineligible Person, Union Hospital shall screen all prospective employees and prospective contractors prior to engaging their services by (i) requiring applicants to disclose whether they are Ineligible Persons, and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available over the Internet at <http://www.arnet.gov/epls>) and the HHS/OIG Cumulative Sanction Report (available over the Internet at <http://www.dhhs.gov/progorg/oig>).

If Union Hospital has notice that an employee is charged with a criminal offense related to any Federal program, or is suspended or proposed for exclusion during his or her employment with Union Hospital, Union Hospital will remove such employee from responsibility for, or involvement with, Union Hospital's business operations related to the Federal health care programs until the resolution of such criminal action, suspension, or proposed exclusion. If Union Hospital has notice that an employee has become an Ineligible Person, Union Hospital will discontinue the person's employment at least until such time as the person is reinstated into participation in the Federal health care programs.

I. Notification of Proceedings. Within thirty (30) days of discovery, Union Hospital shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that Union Hospital has committed a crime or has engaged in fraudulent activities or any other knowing misconduct. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Union Hospital shall also provide written notice to OIG within thirty (30) days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings.

J. Reporting.

1. *Credible evidence of misconduct.* If Union Hospital discovers credible evidence of misconduct from any source and, after reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil, or administrative law concerning Union Hospital's practices related to Federal health care programs, then Union Hospital will promptly report such probable violation of law to HHS/OIG. Defendants shall make this disclosure as soon as practicable, but not later than thirty (30) calendar days after becoming aware of the existence of the probable violation. Union Hospital's report to HHS/OIG will include:

- a. the findings concerning any such probable violation;
- b. Union Hospital's actions to correct such probable violation; and

c. any further steps it plans to take to address such probable violation and prevent it from recurring in the future.

2. *Inappropriate Billing.* If Union Hospital discovers inappropriate billing through means other than the Independent Review Organization's engagement Union Hospital shall follow procedures in section III.E regarding overpayments and material deficiencies.

IV. **IMPLEMENTATION AND ANNUAL REPORTS**

A. **Implementation Report.** Within one hundred twenty (120) days after the Effective Date, Union Hospital shall submit a written report to the OIG summarizing the status of implementation of the requirements of this CIA. This implementation report shall include:

1. the name, address, phone number and position description of the Compliance Officer required by section III.A;
2. the names and positions of the members of the Compliance Committee required by section III.A;
3. a copy of Union Hospital's Code of Conduct required by section III.B.1;
4. the index of the Policies and Procedures required by section III.B.2;
5. a description of the training programs required by section III.C and a schedule of when the training sessions were held;
6. a certification by the Compliance Officer that:

- a. The Policies and Procedures required by section III.B have been developed, are being implemented, and have been made available to all affected employees, independent contractors, and medical staff members;
- b. all employees, independent contractors, and medical staff members have completed the Code of Conduct certification required by section III.B.1; and
- c. all employees have completed the training certification required by section III.C.

7. a description of the confidential disclosure program required by section III.G;

8. the identity of the Independent Review Organization(s) and the proposed start and completion date of the first audit; and

9. a summary of personnel actions taken pursuant to section III.G, H or I.

B. Annual Reports. Union Hospital shall submit to the OIG an Annual Report, with respect to the status and findings of Union Hospital's compliance activities.

The Annual Reports shall include:

- 1. any change in the identity or position description of the Compliance Officer and/or members of the Compliance Committee described in section III.A;

2. a certification by the Compliance Officer that:
 - a. all employees, independent contractors, and medical staff members have completed the annual Code of Conduct certification required by section III.B.1; and
 - b. all employees have completed the training certification required by section III.C.
3. Identification of the number and percentage of independent contractors and medical staff members who attended substantive training in the preceding year;
4. notification of any changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy);
5. a complete copy of the reports prepared pursuant to the Independent Review Organization's billing and compliance engagement, including a copy of the methodology used.
6. Union Hospital's response/corrective action plan to any issues raised by the Independent Review Organization.
7. a summary of material deficiencies (if any) reported throughout the course of the previous twelve (12) months pursuant to III.E and III.J.

8. a report of the aggregate overpayments that have been returned to the Medicare, Medicaid, and other Federal health care programs that were discovered as direct or indirect result of implementing this CIA.

Overpayment amounts should be broken down into the following categories: Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;

9. a copy of the confidential disclosure log required by section III.G;

10. a description of any personnel action (other than hiring) taken by Union Hospital as a result of the obligations in section III.H;

11. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that Union Hospital has committed a crime or has engaged in fraudulent activities, that have been reported pursuant to section III.J. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information;

12. a corrective action plan to remedy the probable violations of law identified in section III.G and III.I; and

13. a listing of all of the Union Hospital's locations (street, city, state, zip), the corresponding name under which each location is doing business, the

corresponding phone numbers and fax numbers, each location's Federal health care program identification number(s) and the payor (specific contractor) that issued each Union Hospital identification number.

The first Annual Report shall be received by the OIG no later than one year and thirty (30) days after the Effective Date. Subsequent Annual Reports shall be submitted no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that: (1) Union Hospital is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) that the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

V. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated subsequent to the Effective Date, all notifications and reports required under the terms of this CIA shall be submitted to the entities listed below:

OIG: Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, SW
Washington, DC 20201
Phone 202.619.2078
Fax 202.205.0604

Union Hospital: Ms. Lori Moon
Union Hospital
1606 North 7th Street
Terre Haute, IN 47804
812/238-7533 - tel.

VI. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation or contract OIG or its duly authorized representative(s), subject to any properly asserted legal privilege, may examine Union Hospital's books, records, and other documents and supporting materials for the purpose of verifying and evaluating: (a) Union Hospital's compliance with the terms of this CIA; and (b) Union Hospital's compliance with the requirements of the Medicare, Medicaid and other Federal health care programs in which it participates. The documentation described above shall be made available by Union Hospital to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Union Hospital's employees and independent contractors who consent to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee or independent contractor and OIG. Union Hospital agrees to assist OIG in contacting and arranging interviews with such employees and/or

independent contractors upon OIG's request. Union Hospital's employees may elect to be interviewed with or without a representative of Union Hospital present.

VII. DOCUMENT AND RECORD RETENTION

Union Hospital shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs or to compliance with this CIA, one year longer than the term of this CIA (or longer if otherwise required by law).

VIII. BREACH AND DEFAULT PROVISIONS

Union Hospital is expected to fully and timely comply with all of the obligations herein throughout the duration of the compliance period required by this CIA.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Union Hospital and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day beginning one hundred twenty (120) days after the Effective Date and concluding at the end of the term of this CIA Union Hospital fails to have in place any of the following:

- a. a Compliance Officer;
- b. a Compliance Committee;

- c. written Code of Conduct;
- d. written Policies and Procedures;
- e. a training program; and
- f. a Confidential Disclosure Program.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Union Hospital fails meet any of the deadlines to submit the Implementation Report or the Annual Reports to the OIG.

3. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Union Hospital employs or contracts with an individual or entity after that individual or entity has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)). This Stipulated Penalty shall not be demanded if Union Hospital can demonstrate that it did not discover the individual's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.H) as to the current or potential status of the employee, consultant, or contractor, and Union Hospital terminated the employment or contract of such individual immediately upon notice of ineligibility.

4. A Stipulated Penalty of \$1,500 (which shall begin to accrue on the date the Union Hospital fails to grant access) for each day Union Hospital fails to grant access to the information or documentation as required in section VI of this CIA.

5. A Stipulated Penalty of \$1,000 (which shall begin to accrue ten (10) days after the date that the OIG provides notice to Union Hospital of the failure to comply) for each day Union Hospital fails to comply fully and adequately with any obligation of this CIA. In its notice to Union Hospital, the OIG shall state the specific grounds for its determination that the Union Hospital has failed to comply fully and adequately with the CIA obligation(s) at issue.

B. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Union Hospital has failed to comply with any of the obligations described in section VIII.A and determining that Stipulated Penalties are appropriate, the OIG shall notify Union Hospital by personal service or certified mail of (a) Union Hospital's failure to comply; and (b) the OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

Within fifteen (15) days of the date of the Demand Letter, Union Hospital shall either (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section VIII.D. In the event Union Hospital elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Union Hospital cures, to the OIG's satisfaction, the alleged breach in dispute. Failure to respond to the

Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under section VIII.C.

2. *Timely Written Requests for Extensions.* Union Hospital may submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Union Hospital fails to meet the revised deadline as agreed to by the OIG-approved extension. Notwithstanding any other provision in this section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after Union Hospital receives OIG's written denial of such request. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section V.

4. *Independence from Material Breach Determination.* Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for the OIG's determination that Union Hospital has materially breached this CIA, which decision shall be made at the OIG's discretion and governed by the provisions in section VIII.C, below.

C. Exclusion for Material Breach of this CIA

1. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Union Hospital constitutes an independent basis for Union Hospital's exclusion from participation in Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by the OIG that Union Hospital has materially breached this CIA and that exclusion should be imposed, the OIG shall notify Union Hospital by certified mail of (a) Union Hospital's material breach; and (b) the OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude Letter").

2. *Opportunity to Cure.* Union Hospital shall have thirty five (35) days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:

- a. Union Hospital is in full compliance with this CIA;
- b. the alleged material breach has been cured; or

- c. the alleged material breach cannot be cured within the 35 day period, but that (i) Union Hospital has begun to take action to cure the material breach, (ii) Union Hospital is pursuing such action with due diligence, and (iii) Union Hospital has provided to the OIG a reasonable timetable for curing the material breach.

3. *Exclusion Letter.* If at the conclusion of the thirty five (35) day period, Union Hospital fails to satisfy the requirements of section VIII.C(2), the OIG may exclude Union Hospital from participation in the Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). OIG will notify Union Hospital in writing of its determination to exclude Union Hospital (this letter shall be referred to hereinafter as the “Exclusion Letter”). Subject to the Dispute Resolution provisions in section VIII.D, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and will also apply to all other federal procurement and non-procurement programs. If Union Hospital is excluded under the provisions of this CIA, Union Hospital may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

4. *Material Breach.* A material breach of this CIA means:

- a. a failure by Union Hospital to report a material deficiency, take corrective action and pay the appropriate refunds, as provided in section III.E;
- b. repeated or flagrant violations of the obligations under this CIA, including, but not limited to, the obligations addressed in section VIII.A of this CIA;
- c. a failure to respond to a Demand letter concerning the payment of Stipulated Penalties in accordance with section VIII.B above; or
- d. a failure to retain and use an Independent Review Organization for review/audit purposes in accordance with section III.D.

D. Dispute Resolution

1. *Review Rights.* Upon the OIG's delivery to Union Hospital of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, Union Hospital shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, the OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and/or the Departmental Appeals Board ("DAB") in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the

request for a hearing involving stipulated penalties shall be made within fifteen (15) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under this CIA shall be (a) whether Union Hospital was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (b) the period of noncompliance. Union Hospital shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for the OIG with regard to a finding of a breach of this CIA and orders Union Hospital to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable twenty (20) days after the ALJ issues such a decision notwithstanding that Union Hospital may request review of the ALJ decision by the DAB.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be (a) whether Union Hospital was in material breach of this CIA; and (b) whether such breach was continuing on the date of the Exclusion Letter.

For purposes of the exclusion herein exclusion shall take effect only after an ALJ decision which is favorable to the OIG. Union Hospital's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Union Hospital upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect twenty (20) days after the ALJ issues such a decision, notwithstanding that Union Hospital may request review of the ALJ decision by the DAB.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this CIA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this CIA and Union Hospital agrees to waive any right it may have to appeal the decision administratively, judicially or otherwise seek review by any court or other adjudicative forum.

IX. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, Union Hospital and the OIG agree as follows:

A. This CIA shall be binding on the successors, assigns and transferees of Union Hospital;

B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;

C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and

D. The undersigned Union Hospital signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he or she is signing this CIA in his official capacity and that he or she is authorized to execute this CIA.

ON BEHALF OF UNION HOSPITAL

R. Frank Shelton

Mr. Frank Shelton
President

DATE 12/22/98

E. Michael Flanagan

E. Michael Flanagan, Esq.
Gardner, Carton & Douglas
Counsel for Union Hospital

DATE 12/18/98

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Lewis Morris

LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

DATE 12/14/98